

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) Case No. 1:01-cr-269
)
v.) Honorable David W. McKeague*
)
RODRIGO LOPEZ,)
)
Defendant.) **ORDER**
)

This matter is before the court on objections to the report and recommendation of the magistrate judge, who recommended that defendant's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 be summarily dismissed as time-barred. In his objections, defendant attempts to take advantage of the longer limitations period created by section 2255, ¶ 6(3), which begins to run on the date on which the right asserted by defendant was initially recognized by the Supreme Court, "if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." None of the claims in defendant's section 2255 motion is based upon a right which the United States Supreme Court has made retroactively applicable to cases on collateral review. Specifically, the Court has never determined that the rule of *Blakely v. Washington*, 124 S. Ct. 2531 (2004), or the rule of *United States v. Booker*, 125 S. Ct. 738 (2005), is entitled to retroactive application. In fact, the Sixth Circuit Court of Appeals has squarely held that *Booker* and *Blakely* announced new rules of criminal procedure that cannot be

applied retroactively. *See Humphress v. United States*, 398 F.3d 855 (6th Cir. 2005). Unless and until the Supreme Court holds to the contrary, defendant's argument is meritless.

The magistrate judge alternatively found that defendant's claims for relief lacked substantive merit. Upon *de novo* review, the court concurs. Accordingly:

IT IS ORDERED that the report and recommendation of the magistrate judge (docket # 29) is ADOPTED as the opinion of the court.

IT IS FURTHER ORDERED that defendant's motion to alter, amend or correct his sentence pursuant to 28 U.S.C. § 2255 (docket # 27) is summarily DENIED.

Dated: July 28, 2005

/s/ David W. McKeague
David W. McKeague
United States Circuit Judge

* Honorable David W. McKeague, United States Circuit Judge for the Sixth Circuit Court of Appeals, sitting by designation.